

On September 29, 2017, Mr. M. filed a Petition for De Facto Parentage determination. Mr. M. claimed that he satisfied the criteria of 13 *Del. C.* § 8-201(c)(1)-(3). Mr. M. stated that he originally signed an acknowledgement of paternity and signed A. 's birth certificate, but was later found to not be A. 's biological father. Following the genetic test results, all three parties to this action Mother, Father and Mr. M. , signed a consent order on November 4, 2009 which excluded Mr. M. as A. 's Father and adjudicated Father to be A. 's father. In his Petition, Mr. M. noted that he and A. have fostered a parent-child like relationship, he has exercised parental responsibility of A. , and has established a nine (9) year bond with A. since her birth. On October 25, 2017, Mother filed an Answer to Mr. M. ' Petition for De Facto Parentage Rights. Mother stated that Mr. M. had been incarcerated for the past two (2) years and has not had any contact with A. for the past three (3) years. Mother admitted that Mr.

M. had a bond with A. but had not been in her life for the last three (3) years. Mother further stated that A. was happy and healthy and did not need Mr. M. ' assistance. Father also opposed the Petition.

Mr. M. filed a Motion for Child Interview on February 27, 2018, asking the Court to interview A. . On March 9, 2018, Mother filed an Answer to the Motion for Child Interview. Mother stated that she strongly objected to A. being interviewed. Mother noted that Mr. M. ' Petition for De Facto Parentage Rights was meritless and inappropriate. On March 13, 2018, the Court deferred decision regarding the Motion for Child Interview until the conclusion of the hearing on April 13, 2018, to determine if Mr. M. demonstrated a sufficient basis. The Court noted that 13 *Del. C.* § 724 is in the custody and visitation chapter of the code not parentage. At the conclusion of the hearing on April 13, 2018, the Court denied Mr. M. ' Motion for Child Interview. Mr. M. filed a Motion for Introductory Facts on April 7, 2018 which was denied as there no basis to introduce facts before the scheduled hearing.

LEGAL STANDARD

13 *Del. C.* § 8-201(c) established the standard for de facto parent status.

De facto parent status is established if the Family Court determines that the de facto parent: (1) Has had the support and consent of the child's parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the de facto parent; (2) Has exercised parental responsibility for the child as the term is defined in § 1101 of this title; and (3) Has acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature.¹

BACKGROUND/TESTIMONY

Mr. M. testified that he and Mother dated from October of 2006 until February of 2009 and lived together off and on until 2013. Mr. M. initially believed A. was his child. Mr. M. stated that he was present for A. 's birth, never denied A. was his, and "took responsibility." In February of 2009, Mr. M. became aware that A. was not his child when his mother conducted an at home paternity test, against Mr. M. ' wishes. After learning he was not A. 's father, Mr. M. advised Father that he could be A. 's father. Mr. M. testified that Father did not petition for parental rights until late 2009. Father testified that it was Ms. M. not Mr. M. who advised him that he could be A. 's father. Mr. M. did not challenge the genetic test results and consented to Father being adjudicated as A. 's father. He did not claim to be a de facto parent or otherwise seek to be her legal father until approximately 8 years later.

Mr. M. stated that he maintained a bond and relationship with A. since she was born. He noted that A. calls him "Daddy M. ." Mr. M. stated that his and Mother's

¹ 13 *Del. C.* § 8-201(c).

relationship changed when Mother and Father had their custody hearing, in early 2014. Mr. M. testified that he was charged with aggravated assault in Pennsylvania and that due to his charges, Father did not want A. to be around Mr. M. . Mr. M. was incarcerated from May of 2015 until May of 2017. Mr. M. stated that he had telephone and written contact with A. while he was incarcerated. Mr. M. also entered into evidence photos that he believes evidence his relationship with A. from 2008 to 2015.² Mr. M. also entered into evidence a letter that he received from Mother.³ In the letter Mother stated that she misses Mr. M. . Mother noted that Mr. M. would be proud of A. and that she had become a teenager. At the end of the letter, Mother stated “we’ll be here when you get out.” Mr. M. also entered into evidence a post card that he received from A. while he was incarcerated.⁴ The post card appears to have a note from A. that states “I love you M. .” Mr. M. believes A. asks for him and has been told she cannot see him. Mr. M. also noted that he reached out to both Mother and Father multiple times requesting visitation and was denied. Mr. M. stated that he thought if he filed, they would go to mediation and he could at least get visitation with A. . The Court noted that Mr. M. could have filed a Petition for Third Party Visitation.

Mother responded to the photos Mr. M. entered into evidence stating that the photos evidence that Mr. M. has not had any contact with A. in four (4) years. Mother also noted that Mr. M. moved to California and then Colorado when A. was four (4) months old and did not return until A. was nine (9) months old. Mr. M. responded stating that he was only gone for one month (1) while A. was a baby, not five (5) months. Mother noted that when Mr. M. returned, Ms. M. conducted the paternity test and they became aware that Mr. M. was not A. ’s father. Mother testified that Father “stepped up” when paternity was established. Mother admitted that A. used to call Mr. M. “Daddy M. ,” but noted that was when Mr. M. was in A. ’s life. Mother testified that she did not foster a relationship between A. and Mr. M. up until he was incarcerated. Mother noted that Mr. M. causes problems between Mother and Father as well as between Mother and Ms. M. . Mother noted that she no longer opens messages that Mr. M. sends as she has “nothing to say to Mr. M. .” Mother stated that the only reason A. had contact with Mr. M. was because they were living with Ms. M. . Mother noted that she has a relationship with Ms. M. and allows A. to see Ms. M. once in a while.

Mr. M. testified that the last time he saw A. was in 2017. Mr. M. clarified that A. was in the car with Ms. M. and he saw A. , he noted that they did not interact. Ms. M. testified that A. saw Mr. M. that day, as later A. mentioned that she saw him. Mr. M. stated that the last physical interaction he had with A. was in May of 2015, before he was incarcerated. Mr. M. also noted that for Valentine’s Day 2015, he, Ms. M. , Mother, and A. were together and baked cupcakes. He stated that he did not want A. to visit him while he was incarcerated as he did not want to subject A. to the prison environment. Mr. M. testified that he spoke to A. one time while incarcerated. He noted that he called Ms. M. and spoke to Ms. M. , Mother, and A. .

² See Petitioner’s Exhibit #1.

³ See Petitioner’s Exhibit #2.

⁴ See Petitioner’s Exhibit #2.

Mother testified that Mr. M. has “caused more problems than good.” Mother stated that she did not want Mr. M. around A. . Mother advised that Mr. M. has not had contact with A. in four (4) years. Mother noted that if Mr. M. had any contact with A. in that period of time, it was arranged by Ms. M. and was against both her and Father’s wishes. Mother stated that Ms. M. has gone against their wishes in the past and allowed A. contact with Mr. M. . Mother noted that A. has not asked about Mr. M. since they lived together. Mother stated that if A. would have asked for Mr. M. , she would have let her speak to him. Mother noted that A. is now ten (10) years old and has not seen Mr. M. since she was six (6) years old. Mother believes A. ’s only memory of Mr. M. is from a photo in Ms. M. ’ home. Mother noted that Ms. M. even told A. , while Mr. M. was incarcerated, that Mr. M. was in a bad place and would never see A. again. Mother testified that Mr. M. never called Mother from prison. Mother stated that she may have spoken to Mr. M. twice while he was incarcerated, as she was at Ms. M. ’ home and Mr. M. called.

Ms. M. believes Mother fostered a parental bond between Mr. M. and A. . Ms. M. testified that Mr. M. had a strong bond with A. that consisted of “happy unconditional love,” but that relationship was taken away by Father after Mr. M. ’ criminal charges in 2014. Ms. M. further testified that in 2014 the parties agreed that Mr. M. would not see A. . However, in late 2014, around November, Mr. M. needed to live with Ms. M. . Ms. M. stated that she had a conversation with Father and asked if Mr. M. needed to leave her home when A. was there. Ms. M. noted that Father stated “nah that’s okay.” Ms. M. stated that she also spoke to Mother and Mother was excited. Ms. M. testified that she and Mother have always been friends and that Mother has talked to her about the difficulties of being friends with Mr. M. and Father not liking Mr. M. . Ms. M. noted that A. has asked to see Mr. M. in the past year, specifically last summer. Ms. M. stated that she told A. that she could not see Mr. M. as Father does not like Mr. M. . Ms. M. responded to Mother’s statement that Ms. M. told A. that Mr. M. had done something bad and she would never see Mr. M. again. Ms. M. stated that she never said those things to A. . Ms. M. testified that she felt Father’s wishes for no contact between A. and Mr. M. was lifted before Mr. M. ’ incarceration when Mr. M. resided with Ms. M. . Ms. M. stated that she never went behind Father’s back or against his wishes.

Father advised that from the beginning he made it clear that he did not want Mr. M. to have contact with A. . Father testified that Mr. M. was aware Father did not want Mr. M. to contact A. . Father stated that he became aware that Mr. M. had contact with A. after the contact occurred. He further noted that Mr. M. ’ contact with A. caused an issue between Father and Mother. Again Father noted that his wishes were clear and the contact was against his wishes. Father testified that he and Ms. M. did not have a conversation where Father stated that Mr. M. could see A. .

Ms. L. testified that Mr. M. and A. had a positive and loving relationship. She noted that A. called Mr. M. “Daddy M. .” Ms. L. stated that you could tell Mr. M. loved A. and noted that she had only seen positive things between A. and Mr. M. . Ms. L. testified that A. never had to be disciplined when in the presence of Mr. M. or Ms.

M. Ms. L. advised that Ms. M. lived with her for a period of nine (9) months and during that time A. would come over to visit Ms. M. She noted that it had been a couple of years since she saw Mr. M. and A. together. Ms. L. was not aware of Mr. M.' parenting in the last few years and noted that she believed Mr. M. had not seen A. the past few years due to his incarceration. Ms. D. testified that A. had a relationship with Mr. M. She noted that even after Mr. M. was found not to be A.'s father, A. still called him "Daddy M." Ms. D. was not aware of the last time Mr. M. had contact with A.

Mr. M. has never paid child support. Mr. M. testified that he supported A. "in the beginning." He stated that he provided diapers, formula, food, and clothing for A. Mother asked Mr. M. what he had provided for A. in the past seven (7) years. Mr. M. responded that he had provided clothing, food, and school supplies. Mr. M. stated that the last time he provided financial support for A. was in 2014 or 2015, before he was incarcerated. He noted when he returned home, that he did buy snacks and food for Ms. M.' home, however Mother and A. were no longer residing there at that time. Mother asked Mr. M. if she had asked for financial help for A. in the past seven (7) years. Mr. M. stated that Mother had asked for money for food and clothes. Mr. M. also noted that Mother lived with Ms. M. until the end of 2013. Mother testified that Mr. M. has provided no financial support for A. Mother stated that she lived with Ms. M., but never relied on Mr. M. Mother noted that she never asked Mr. M. for help and never needed his help to care for A.

Father stated that he and Mother raised A., not Mother, Father, and Mr. M. Mother and Father testified that they have joint custody of A. Father does not believe Mr. M. had a relationship with A. and noted that Mr. M. does not have a relationship with A. currently. Father testified that he became aware A. was his child when A. was eleven (11) months old. He stated that he bought a home paternity test and the results came back that A. was his child. He noted that since that time, he has raised A. A. and Mother also resided at Father's home for a period of time. Father stated that he and Mother have had "ups and down." Father stated that things are now good and he and Mother are co-parenting. He even noted that he and Mother go to A.'s games together and are working well together.

Mother noted that A. was unaware of the proceedings as Mother did not want A. to worry. Mother does not feel that it would be a good idea for Mr. M. to enter A.'s life after not having contact with her for the past four (4) years. Mother noted that A. has a Mother and Father. Mother and Father have a shared custody arrangement. A. already has two (2) homes and two (2) families. Mother noted that both she and Father are in relationships, so A. already has two (2) additional parental figures in her life. Mother testified that she and Father are co-parenting fine without Mr. M. Mother believed adding another person would interrupt her and Father's co-parenting. Mother noted that she does not believe she could co-parent with Mr. M. as they do not get along for "periods of time." Mother stated that A. is happy, thriving, and doing well in school. A. plays sports and is a girl scout.

Father advised that he and Mother have been operating under a shared, 50/50 custody arrangement for years. Father also noted that A. is doing well in school, is "living her life," and is doing well with two (2) houses and two (2) families. As with Mother, Father expressed

concern that adding another person would disrupt A. . Father expressed concern that Mr. M. entering A. 's life would cause a strain. Mr. M. also noted that he and Mother are almost co-parenting great and he does not want Mr. M. to mess up what they have worked towards. In addition, Father believes a relationship with Mr. M. would hurt A. . Father stated he does not want A. to have a relationship with Mr. M. due to Mr. M. ' criminal behavior. Father also stated that before incarceration, Mr. M. was a party guy and Father believed Mr. M. was a drug addict. Father admitted that he is not aware of Mr. M. ' current behavior or life style.

Ms. M. testified that she believed it would help A. to have Mr. M. in her life as A. does not know what is happening or going on. Ms. M. stated that Father and Mr. M. would have to learn how to co-parent as adults. Ms. M. also admitted that she thinks it would be difficult for Mother, Father, and Mr. M. to all co-parent A. .

The Court asked Mr. M. why he waited seven (7) years before filing anything. Mr. M. responded that he was naive. Mr. M. testified that he did not file for de facto status earlier as he only learned of de facto status while incarcerated. He noted that when he was released, Mother told him not to file anything right away. In addition, Mother and Ms. M. advised him to "give it time." Mr. M. stated that he believed at that time Mother was in support of him seeing A. and that only Father was against Mr. M. seeing and visiting A. . He stated that he waited six (6) months and then filed. The Court asked Ms. M. if she should be given de facto status. Ms. M. responded that she had a solid bond with A. , but that she wants to be A. 's "mom-mom" and desires visitation with A. , but does not want de facto parent status. The Court asked Mr. M. if he believed Ms. M. would meet the standard for de facto status and what the difference was between them in terms of their status. Mr. M. stated that he believed there was a difference as he thought he was A. 's father from the beginning. However, Mr. M. noted that Ms. M. has "contributed the most."

Mr. M. stated that A. was emotionally, mentally, and financially dependent on him until his incarceration in 2015. In his closing, Mr. M. testified that he has been in A. 's life since she was born. Mr. M. stated that he had acted as one of A. 's parents and that A. had a bond with him that was parental in nature. Mr. M. testified that A. is dependent on him emotionally, noting that A. still asks for him.

LEGAL ANALYSIS

Support and Consent of Parent or Parents

In order for de facto status to be established, Mr. M. needs to have had the support and consent of a parent or parents who fostered the formation of a parent-like relationship between Mr. M. and A. . At a minimum, it is clear that Father has not provided support or consent nor fostered a parent-like relationship between Mr. M. and A. . However, Mr. M. alleges that he had the support of Mother and that Mother fostered a parent-like relationship between himself and A. . Mr. M. testified that he has maintained a bond and relationship with A. since she was born and noted that A. calls him "Daddy M. ."

Mother testified that she has not supported a parent-like relationship between Mr. M. and A. . Mother stated that the only reason A. had contact with Mr. M. was because they were living with Ms. M. . Mother noted that Mr. M. has not seen A. in four (4) years. Mother stated that any contact Mr. M. had with A. in the past four (4) years was against her wishes and not facilitated by her.

The Court finds that Mr. M. had the support and consent of Mother who fostered the formation and establishment of a parent-like relationship between Mr. M. and A. , at least at the beginning of A. 's life. Both Mother and Mr. M. believed that Mr. M. was A. 's father until Ms. M. conducted an at-home paternity test. At a minimum, during that time, both Mother and Mr. M. held Mr. M. out to be A. 's father. Mr. M. had a parent-like relationship with A. at that time. However, at least since Mr. M. 's incarceration that support has not existed.

Parental Responsibility

Mr. M. also has to have exercised parental responsibility for A. . Parental responsibility is defined in 13 *Del. C.* § 1101, as “the care, support and control of the child in a manner that provides for the child’s necessary physical needs, including adequate food, clothing and shelter, and that also provides for the mental and emotional health and development of such child.”

Mr. M. alleges that he has exercised parental responsibility in regards to A. . Mr. M. testified that he has been there for A. since her birth. He stated that he has a bond and relationship with A. . Mr. M. testified that he provided diapers, formula, food, clothing, and school supplies for A. . Mr. M. stated that the last time he provided financial support for A. was in 2014 or 2015, before he was incarcerated. He noted when he returned home, he bought snacks and food for Ms. M. 's home, however Mother and A. were no longer residing there at that time.

Mr. M. has never paid child support. Mother testified that Mr. M. has not provided financial support for A. . Mother stated that she lived with Ms. M. , but never relied on Mr. M. for A. 's care or needs.

While Mr. M. may have provided some tangible items on a few occasions for A. , it is unclear how consistent that support was or if it rises to the level of parental responsibility. The Court notes that parental responsibility encompasses more than purchasing a few items for the Child. Mr. M. , by his own account, has not exercised any parental responsibility for A. since May of 2015. Even if *arguendo*, the Court finds that Mr. M. has exercised parental responsibility, the case still turns on if Mr. M. has a bonded and dependent relationship with A. that is parental in nature.

Bonded and Dependent Relationship

Lastly, Mr. M. has to have acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with A. that is parental in nature. Mr. M. claims that A. is emotionally dependent on him. Mr. M. claims that A. still asks for him.

Mother and Father stated that they have been operating under a shared custody arrangement since 2014. Mother and Father testified that they have been the ones raising A., not Mr. M.. Again, Mother noted that Mr. M. has not even seen A. in four (4) years. Mother testified that A. does not ask for Mr. M. and advised that if she did, Mother would have allowed A. to speak to Mr. M..

The Court finds that Mr. M. has not acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with A. that is parental in nature. Mr. M. testified that he had not seen A. since May of 2015. A. and Mr. M. have not had an interaction with one another in at least three (3) years. As such, A. does not have a bonded and dependent relationship with Mr. M. that is parental in nature. Mother and Father have been providing for A.'s care and have been operating under a shared custody arrangement since 2015.

CONCLUSION

The Court finds that Mr. M. has failed to meet the three (3) criteria necessary to achieve de facto parent status as defined in 13 Del. C. § 8-201(c). At a minimum, Mr. M. failed to meet de facto status as A. is not and has not been dependent on Mr. M.. The evidence shows that Mr. M. did have a parent-like relationship with A. and Mother seemed to encourage that relationship, at least at the beginning of A.'s life and it continued for some time. While Mother may have fostered a relationship between A. and Mr. M. in the beginning, it is clear that Father did not foster a relationship and in fact objects to Mr. M. and A. having a relationship. Additionally, at the time of the hearing, Mother objected to Mr. M. having a relationship with A.. According to Mr. M.'s own testimony, he has not had contact with A. since May of 2015. It is clear that no one has fostered a relationship between Mr. M. and A. since that time. Mr. M. may have had limited phone calls with A., that seemed to be conducted by Ms. M.. It was unclear if Mother was aware of the calls. It was evident that Father was not aware of the calls and everyone knew Father was not supportive of Mr. M. having contact with A.. Even if Mr. M. and A. did exchange a few phone calls, phone calls alone are not an emotional bond and do not form a dependent relationship. Mr. M. has had very little, if no relationship, with A. for the past three (3) years. Two (2) out of those three (3) years, Mr. M. was incarcerated. Even Mr. M.'s witnesses were not sure the last time Mr. M. had seen A..

STATUTORY BAR TO PETITION

Even if Mr. M. were able to establish the criteria for *de facto* parent status, the Court finds that Mr. M.'s Petition is untimely as he did not contest that adjudication excluding his paternity.⁵ Mr. M. testified that his paternity was excluded in February of 2009. Mr. M. actually signed a consent Order on November 4, 2009 which became an Order on November 5, 2009 excluding himself as A.'s father. A petition filed to be a *de facto* parent is a petition for parentage. It is just one way to prove parentage. Thus, it is subject to the other statutory provisions regarding parentage in the code. After the agreement to the exclusion of paternity in November, 2009, Mr. M. had a limited window of sixty days to rescind this action. Mr. M. did not file this petition within the two (2) years that even someone who was not a party to the original parentage action could have filed.⁶ Father's paternity was established by Order of the Court dated February 16, 2010. Lastly, the Court finds that Mr. M. would be estopped from bringing the action due to the length of time he waited to file. Mother and Father have been through several custody hearings. At no time during those proceedings did Mr. M. bring his action. Mother and Father have been providing for A.'s care and have been operating under a shared custody arrangement at least since February 25, 2015, the last order entered regarding custody.

⁵ 13 Del. C. § 8-307. Proceeding for rescission

A signatory may rescind an acknowledgement of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

- (1) Sixty days after the effective date of the acknowledgement or denial, as provided in § 8-304; or
- (2) The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

13 Del. C. § 8-308. Challenge after expiration of period for rescission

- (a) After the period for rescission under § 8-307 of this title has expired, a signatory of an acknowledgement of paternity or denial of paternity may commence a proceeding to challenge the acknowledgement or denial only:

- (1) On the basis of fraud, duress, or material mistake of fact; and
- (2) Within 2 years after the acknowledgement or denial is filed with the Office of Vital Statistics.

- (b) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

⁶ 13 Del. C. § 8-609. Limitation: Child having acknowledged or adjudicated father

- (a) If a child has an acknowledged father, a signatory to the acknowledgement or paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgement or denial or challenge the paternity of the child only within the time allowed under §§ 8-307 or 8-308 of this title.
- (b) If a child has an acknowledged father or an adjudicated father, an individual who is neither a signatory to the acknowledgement of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding no later than 2 years after the effective date of the acknowledgement or adjudication.
- (c) A proceeding under this section is subject to the application of the principles of estoppel established in § 8-608 of this title.

CONSTITUTIONALITY OF STATUTE

While not necessary to deny this Petition, the Court notes that it has serious concerns regarding the constitutionality of the *de facto* parentage statute and its impact on a parent's fundamental rights to raise their children. The statute is very broad in terms of who may file for *de facto* parent status and does not limit the number of *de facto* parents one child can have. As written, step-parents, grandparents, or even nannies could file for *de facto* status.

ORDER

THEREFORE, in consideration of the above factors, the Court finds that it is appropriate to enter the following Order:

IT IS HEREBY ORDERED this 27th day of June, 2018 that:

- 1) Mr. M. ' Petition for De Facto Parentage Rights is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

FELICE GLENNON KERR, Judge

FGK/pmw

Date mailed: _____